

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CRUZITA RODRIGUEZ, TERRY	§	
A. RAGON, AND CONSUELO CASTILLO	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CASE NO. 5:18-cv-1096
	§	
ALLSTATE FIRE AND CASUALTY	§	
INSURANCE COMPANY	§	
<i>Defendant.</i>	§	

**DEFENDANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S
NOTICE OF REMOVAL**

Defendant Allstate Fire and Casualty Insurance Company hereby removes this lawsuit which is currently pending in the District Court of the 57th Judicial District of Bexar County, Texas, Cause No. 2018-CI-12748, to the United States District Court for the Western District of Texas, San Antonio Division, pursuant to 28 U.S.C. §§ 1441 and 1446, on the grounds of diversity of citizenship and amount in controversy, and respectfully shows the Court as follows:

BACKGROUND

1. On July 11, 2018, Plaintiffs filed their Original Petition styled *Cruzita Rodriguez, Terry A. Ragon, and Consuelo Castillo v. Allstate Fire and Casualty Insurance Company*, in the District Court of the 57th Judicial District of Bexar County, Texas, Cause No. 2018-CI-12748, in which Plaintiffs allege contractual and extra-contractual causes of action based on a claim for underinsured motorist benefits. *See Exhibit A.*

2. Plaintiff served Defendant Allstate with Plaintiff's Original Petition and process on September 26, 2018, by certified mail on its registered agent. *See Exhibit A.* Although the state court records show that service of process was previously attempted by serving Corporate

Service Company and United States Corporations, Inc., *see Exhibit B*, neither entity is Defendant's agent for service of process. Instead, Defendant's agent for service of process is C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.¹ Defendant did not receive the citations or the petition attached to the citation from those incorrect attempts at service. Defendant discovered the citations when preparing this notice of removal.

3. Plaintiffs assert causes of action for breach of contract, violations of the Deceptive Trade Practices Act, violations of the Texas Insurance Code, breach of common law duty of good faith, and fraud. *Id.* Plaintiffs affirmatively plead for damages "in excess of \$200,000 but less than \$1,000,000." *Id.* at ¶ 20.

4. Plaintiffs have demanded a jury trial.

5. Defendant has not answered the suit in state court.

GROUND FOR REMOVAL

6. This Court has original jurisdiction of this suit based on 28 U.S.C. § 1332(a) because this suit involves a controversy between citizens of different states and there is complete diversity between the parties at the time of the filing of the suit and at the time of the removal. Further, the amount in controversy, exclusive of interest and costs exceeds \$75,000.00.

A. Parties are Diverse

7. Plaintiffs are natural persons who affirmatively allege that they reside in Bexar County, Texas. *See Plaintiff's Original Petition*, Exhibit A, ¶ 2 ("Plaintiffs are an individual [sic] residing in Bexar County, Texas."). Plaintiffs have not pled any other facts of their residency, intention to leave Texas, or domiciles in other States. *Id.* Accordingly, Plaintiff's citizenship at

¹ As shown by the webpage maintained by the Texas Department of Insurance. *See* goo.gl/yeYtYg (last visited 10/16/2018).

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the time of the filing of the suit and at the time of removal is properly established as the State of Texas. *See Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011).

8. Defendant Allstate Fire and Casualty Insurance Company, is an Illinois corporation with its principle place of business in Illinois and is a citizen of Illinois.

B. Amount in Controversy

9. The party seeking federal jurisdiction must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00. *Grant v. Chevron Phillips Chem. Co. L.P.*, 309 F.3d 864, 868 (5th Cir. 2002). The removing party may satisfy its burden by either (1) demonstrating that it is “facially apparent” from the petition that the claim likely exceeds \$75,000.00, or (2) “by setting forth the facts in controversy – preferably in the removal petition, but sometimes by affidavit – that support a finding of the requisite amount.” *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

10. Here, it is facially apparent from Plaintiff’s petition that the claim exceeds \$75,000.00. Specifically, under “Damages”, Plaintiff’s petition states:

Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiffs seek monetary relief over two hundred thousand and 00/100 dollars (\$200,000.00) but not more than one million and 00/100 dollars (\$1,000,000.00) ...

Plaintiff’s Petition, Exhibit B, ¶ 20 (original emphasis and all caps omitted).

11. Based on the foregoing, the amount in controversy exceeds \$75,000.00.

REMOVAL IS PROCEDURALLY PROPER

12. This notice of removal is timely filed within thirty (30) after service of process upon Defendant. *See* 28 U.S.C. §1441(b)(1).

13. Venue is proper in this Court under 28 U.S.C. §1441(a) because this District and Division of this Court embraces Bexar County, Texas, the place where the State Court suit was filed.

14. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, and orders served upon Defendant in the state court action are attached herein as Exhibit A.

15. Pursuant to 28 U.S.C. §1446(d), Defendant will promptly provide a true and correct copy of this Notice of Removal to Plaintiff and to the Clerk of Bexar County District Court.

PRAYER FOR RELIEF

16. Defendant Allstate Insurance Company prays that the Court accept jurisdiction over the state court action for the reasons set forth above, and grant Defendant any such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that the foregoing instrument was served on the following counsel this 17th day of October 2018, pursuant to Rule 5 of the Federal Rules of Civil Procedure, via the CM/ECF system:

Thomas J. Henry
Phillip Ripper
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Corpus Christi, Texas 78401
Counsel for Plaintiffs

/s/ Robert E. Valdez

Robert E. Valdez